* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: October 5, 2006

\+ **W.P.(C).No.13095/2005**

SHRI SAI SEWA DAL (REGD) ..... PETITIONER
Through: Mr.Manmohan, Sr. Advocate with Mr.M.B. Singh, Advocate

Versus

UNION OF INDIA & ORS .... RESPONDENTS
Through: Mr.Rajan Sabharwal, Advocate for respondent No.1.
Mr.S.D. Kaushik, Advocate for respondent Nos.2 to 4.
Mr.A.K. Singla, Sr. Advocate with Mr.R.R. Sahay, Advocate for respondent No.6.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest?

Anil Kumar, J.

Rule.

1. The learned counsel for the parties state that no other affidavits are to be filed and the matter be taken up for final disposal.

2. The learned counsel for the petitioner restricts his prayer to appointment of Mr.Justice K.Ramamoorthy (Retd.), who is appointed by respondent No.6 as observer for the election of management committee of respondent No.6 to be held on

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6.10.2006, to be appointed as a Court observer/administrator giving him all necessary and incidental powers to ensure free and fair elections of respondent No.6 and till then management of Sai Temple at Lodhi Road, Delhi be also done by him.

3. Brief facts to comprehend the disputes are that the petitioner is a society registered under the Societies Registration Act and is engaged in doing various religious, charitable, social and secular activities and to provide all kind of related facilities to the devotees of all religious institutions, temples, gurudwaras, churches etc.

4. The grievance of the petitioner is that while providing volunteers and charitable services in Sai temple located at Lodhi Road which is one of Delhi's oldest temple of Sai Baba and is also known as "Chhota Shirdi" they have come across great illegalities, misuse and embezzlement of funds, donations and charity worth crores of rupees.

5. The petitioner contended that it reported the said illegalities to concerned authorities and departments but no action has been taken till date and consequently the state of affairs of the temple are going from bad to worse unabated and there is no law or authority to check the public money being swindled away or being misused for personal use by the members of the so called ad-hoc committee of respondent No.6.

6. According to the petitioner the day to day affairs of respondent No.6 are being managed illegally, un-authorizedly, arbitrarily and autocratically by so called ad-hoc committee headed by its self styled Honorary secretary Sh.S.K.Kapoor with the assistance/connivance of his friends such as Mr.O.P.Sharma who is working as the manager and his family members which includes his son Mr.Romi Kapoor. The

affairs of the temple are being run on the personal whims and fancies of Sh.S.K.Kapoor and his associates and there is no duly elected and constituted managing committee to manage the affairs of the temple because neither the general body meeting nor election of the managing committee has taken place for the last over eight years. According to the petitioner even the authentic list of members of respondent No.6 is not there and the original and founder members have either expired or have shifted their residence or have stopped coming to the temple or taking interest in respondent No.6 society due to arbitrary and illegal activities of Sh.S.K.Kapoor.

7. According to the rules and regulations the managing committee is required to be constituted and elected in the following manner:-

> " One member for every 10 members of the Samaj subject to a minimum of 6 and a maximum number of 21 members exclusive of the President and all other office bearers."

8. According to the rules and regulations of respondent No.6, the society has founder members, life members, ordinary members and honorary members. The affairs of the respondent No.6 are to be managed by a managing committee. According to the rules and regulations of respondent No.6 the managing committee of the Samaj is as follows:-

> **MANAGING COMMITTEE OF THE SAMAJ:**
>
> The affairs of the Samaj will be managed and administered by a body which shall be known as MANAGING BODY composed of and shall be constituted as under:-
>
> 1. President
>
> 2. Vice President (two)
>
> (One Senior Vice President and the other Junior Vice President.

One of which Sh.R.S.Chitnis shall be permanent Ex-Officio President not subject to elections, during his life time and so long as he does not cease to be a member of the Samaj.)

3. Secretary

4. Joint Secretary

5. Treasurer

6. Joint Treasurer

The Managing Committee composed of and constituted will be elected on the following basis:-

"One member for every 10 members of the Samaj subject to a minimum of 6 and maximum number of 21 members exclusive of the President and all other office-bearers."

9. The powers and functions of the managing committee are also detailed in the rules and regulations which are as follows:-

"a) The Managing Committee shall manage and administer the affairs of the Samaj in accordance with the Rules and Bye-laws made hereunder and in furtherance of the objects incorporated in the Memorandum of Association subject to the general control and directions of the General Body of the Samaj and shall have all powers which may be necessary or expedient for the purpose.

b) Without prejudice to the generality of the powers conferred by the foregoing sub-rule the managing committee shall have the power or powers:-

i. to scrutinise, consider and take decision on application for membership of the Samaj without assigning any reasons;

ii. to prepare, plan and execute schemes for the achievement of the objects of the Samaj as embodied in the Memorandum of Association;

iii. to receive, to have custody and to utilise funds and money of the Samaj for the achievement of the objects of the Samaj;

iv. to engage, appoint and control such staff as may be necessary for smooth and efficient administration, management and control of the affairs of the Samaj and

institutions established maintained and controlled by the Samaj;

v. to enter into agreements for and on behalf of the Samaj;

vi. to sue and defend all legal actions against the Samaj on behalf of the Samaj;

vii. to appoint committees or sub-committees for disposal of business of the Samaj or for advice in any matter relating to and connected with the Samaj;

viii. to make, adopt and vary from time to time bye-laws for the regulation and for any purpose connected with the management and administration of the affairs of the Samaj and for furtherance of its objects, in particular to make, adopt and vary from time to time bye-laws for conducting the business of the Managing Committee and the Committees or Sub-Committees to be appointed by it;

ix. to open an account/accounts with Bank/Banks and operate the same with the joint signatures of the President or Senior Vice President and Treasurer or Joint Treasurer;

x. to invest the funds of the Samaj in Government or other approved securities and otherwise in profitable bonds, shares and equities;

10. The rules and regulations of respondent No.6 also categorically detail the powers of the general body. They are as under:-

"a) All properties movable or immovable or of any other kind shall vest in the General Body.

b) For the purpose of carrying out the objects of the Samaj, the General Body shall exercise all the powers and authority of the Samaj not vested in the Managing Committee.

c)The General Body may appoint any Committee or Committees with such functions and powers as may be determined by it or by the Rules, Regulations or Bye-laws of the Association and for this purpose any of the functions of the Managing Committee may be allotted to such Committee or

Committees.

d) The General Body shall have power to make Bye-laws which are not inconsistent with the Rules and Regulations.

e) The General Body shall have power to amend or alter the Rules and Regulations and Bye-laws of the Samaj in the manner provided in these Rules and Regulations."

11. According to the rules and regulations of respondent No.6 it is the duty of the general body of the Samaj and the managing committee to elect new members of the managing committee and office bearers. The elections as detailed in the rules and regulations are as under:-

" It shall be the duty of the General Body of the Samaj and the First Managing Committee to elect new members of the Managing Committee and office-bearers. The retiring members will be eligible for re-election.

The present President of the Samaj being the founder shall be a permanent Senior Vice President of the Samaj and will not have to seek re-election during his life time.

All members of the Samaj who are life members of the Samaj or have paid membership subscriptions for a minimum period of six months from the date of annual elections will be entitled to vote at the General Body meeting and every member shall have one vote only for the election of every post in the Samaj.

Only those members of the Samaj will be entitled to seek election or re-election to the Managing Committee who are either Life Members of the Samaj or have paid membership subscription for the whole period of the year.

A member of the Samaj whose membership subscription has been in arrears of three months consecutively will cease to be a member of the Samaj and before he is re-admitted to the membership of the Samaj shall have to pay membership subscription for the whole of the period during which he had ceased to be a member of the Samaj and also for a further remaining period of the year.

VACANCY

Any casual vacancy in the membership of the First Managing

Committee may be filled in by the President. Any casual vacancy in the membership of the subsequent Managing Committee shall be filled up by the Managing Committee.

The Managing Committee will function notwithstanding any vacancy or vacancies therein and notwithstanding any defect in its constitution and no act or proceeding of the Managing Committee shall be invalidated by reason of any vacancy or vacancies in the Managing Committee or any defect in its constitution. The Managing Committee will have powers to fill in casual vacancies till the next General meeting."

12. The petitioner contended that in the Sai temple daily donations and charities from devotees in the shape of cash, clothes and ornaments are received on an average to the tune of Rs.1.00 lakh and the offerings are much more on Thursdays. Though the donation boxes are installed but they are neither locked nor they are opened as provided in the Constitution by Sh.S.K.Kapoor who is opening them secretly and privately as per his convenience and consequently except Sh.S.K.Kapoor and his accomplices, no one knows how much donations are actually coming to respondent No.6. According to the rules and regulations of respondent No.6 a definite procedure is prescribed which is as under:-

"That every such donation box shall be locked and sealed under the seal of the President or the Secretary of the Samaj and shall be opened every three months in the presence of the President or Senior Vice President, Secretary or Joint Secretary, Treasurer or Joint Treasurer and any two members of the managing committee."

13. The petitioner also highlighted gross irregularities committed in respondent No.6 which is a charitable institution. According to the petitioner true accounts are not maintained of donations and charities and false and manipulated records are made for last many years and there have been numerous cases of swindling, theft, embezzlement etc of the public money. The petitioner categorically stated about theft

of Rs.60,000/- by an employee of respondent No.6, Mr.T.P.Singh as the theft by Mr.T.P.Singh was reported by a security agency to local police first instead of Mr.S.K.Kapoor. The local police is alleged to have recovered the amount and also registered a case of theft against Mr.T.P.Singh which matter was hushed up in connivance with the ad-hoc committee of respondent No.6.

14. The petitioner also contended about misappropriation of funds of temple by the office bearers in July, 1997 and the complaint by Mr.S.S.Gera. According to the petitioner, management committee of respondent No.6 in connivance with a builder of Lajpat Nagar had embezzled lakhs of rupees. The contract for construction/renovation of OPD and Vishram Sadan at All India Institute of Medical Sciences was awarded to the builder in contravention of the provisions of the constitution of respondent No.6. The petitioner placed reliance on the report of the chartered accountant M/s.Singh K.V.Gupta and Company forming part of audit report under Section 12A9(b) of Income Tax Act where it was observed that the working of respondent No.6 is unacceptable as the same is arbitrary, illegal and in contravention of bye laws of the society and mandatory practice and procedure as provided by the Societies Act, Income Tax etc. Regarding verification of donations the said reports reads as under:-

> Regarding verification of donations it reads as under (on internal page 6 para 2(a) of the report) :
>
> "We have not verified the donations of valuable items received during the year as no such list of items has been given to us by the Treasurer. Further, no list of individual items approved by the approved valuer has been given to us, so as to indicate total stock of such items lying with the Treasurer. However, a list has been given to us dated August 8, 1995 by Shri Narender Mohan Jain, approved valuers, giving the sum total value of the items. In the said list, no individual items have been valued and the same is not acceptable for the following reasons....."

Further, regarding donation (on page 7 in para 3) it reads as under:

"Donations in kind are recorded in the financial books at the value realized which is different from the price quoted by the donor. The vastra as sold at the disoration of the person authorized for sale of Vastra and the rate of discount is not fixed."

And in para 6 on page 7 it records:

"We have not physically verified the fixed assets of the Samaj as no such records are maintained by the Samaj in spite of our repeated observations in earlier years"

Regarding the maintenance of record of expenses the report in para 8 states as under:

"We have verified the medical expenses only on the basis of bill of purchase produced before us. Stock of medicines and X-ray films as on March 31st are not shown in the account as per the past practice and the same is treated as the expenditure in the year of payment. However, the Samaj has given us Certificate of stock with regards to quantity of medicines and X-ray films as on 31st March, 1996, which we have not been able to verify in the absence of proper records."

With regard to utilization of funds it says as under in para 12 on page 9:

"In the absence of necessary information it is not possible for us to verify whether the income or property of the Samaj has utilized for the benefit of the persons referred to in section 13(3) of Income Tax Act, 1961. We have relied only on the certificate of the Secretary in this regard that no person as referred above have derived any benefit from the use of income or property of the Samaj."

In respect of meeting of the Management Committee the report observers in para 18 on pages 10 as under:

"The meetings of the Management Committee have not been conducted in accordance with the provisions of the Bye-Laws of the Society."

15. The petitioner claimed that for last eight years neither the general body meeting has been held nor election of managing committee has been held and the so

called ad-hoc committee is having free hand.

16. In the circumstances petitioner claimed for appointment of an administrator or receiver to take over and manage the day to day affairs of the temple till the new management committee is elected to manage the affairs of respondent No.6 and for directions to respondent Nos.1 & 2 to take appropriate necessary legal actions against respondent Nos.3 to 5 and ad-hoc committee headed by Sh.S.K.Kapoor.

17. The petitioner filed a petition on the premise that the petitioner and respondent No.6 are cooperative societies, however, subsequently on the objection being taken by the respondents the petition was amended and in place of Registrar of Cooperative Societies, Registrar of Societies, Government of NCT of Delhi was impleaded.

18. The respondent No.6 filed a counter affidavit of Shri S.K.Kapoor in response to the show cause notice alleging himself to be honorary Secretary of Sai Bhakt Samaj. It was asserted that respondent No.6 is a society registered under the Societies Registration Act and the Petitioner has no locus standi to file the petition with regard to the affairs of respondent No.6 society inasmuch the petitioner is not a member of respondent No.6 society. It was stated that only a member of the society can raise issues about the management of the society. According to respondent No.6, petitioner wants to usurp the respondent No.6 society, which is a religious and charitable society. It was admitted that the present managing committee of respondent No.6 Society was elected by a special general body meeting held on 19th July, 1998 as prior to election in 1998, no elections were held since 1991 and considerable damage was done to the functioning of the society. It was stated that

against some of the members of the previous managing committee, FIR No.339/1997 had also been registered and subsequently police filed a report in respect of alleged offenders as untraced, however, the Magistrate concerned directed the police to carry on further investigation whereafter police filed a report dated 15th November, 2002 and the matter was adjourned for pre-summoning evidence on 6th July, 2006. Mr. S.K. Kapoor, alleged Honorary Secretary of respondent No.6, also relied on a letter dated 21st June, 2004 alleged to be defamatory by the general secretary of the petitioner society who later on resigned as General Secretary of petitioner society and apologized through his letter dated 14th September, 2004. It was contended that the writ petition has been filed with tainted motives as the present managing committee has taken over the management.

19. Respondent No.6 categorically pleaded that it is neither a state nor instrumentality of state nor a public authority and, therefore, it is not amenable to writ jurisdiction and in any case no member of respondent No.6 has requisitioned any meeting and member by and large wants the present managing committee to continue its effort. Emphasis was also led on by respondent No.6 on various charitable and socially useful good work done by it. Referring to various activities carried on by the Honorary Secretary on behalf of respondent No.6, it was pleaded that those activities were possible only with utmost devotion and contributions from the devotees of Shri Sai Baba. Shri S.K. Kapoor in his counter affidavit contended that he is one of the founder members and Shri O.P. Sharma is the Manager of the society appointed by its managing committee. Allegation that his son was trying to take over various matters pertaining to the society was not admitted and it was stated that affairs of respondent No.6 society are being managed by a duly elected managing committee comprising its

President, Vice President, Honorary Secretary, Joint Secretary, Treasurer, Joint Treasurer and eight members. The allegations regarding misappropriation and mismanagement were denied.

20. The respondent No.6 also produced the notice dated 11th April, 2006 for calling a general body meeting of the *Samaj* on 14th May, 2006 at 10.30 AM. The agenda of the general body meeting was as under:-

1. Confirmation of the minutes of the Annual General Body Meeting held on 19th July, 1998. (Copy Attached)
2. Report of the Hony. Secretary. (To follow)
3. To approve the Audited accounts for the financial years upto 31st March, 2005 along with Auditor's report are attached herewith.
4. Consideration of Resolutions, if any proposed.
5. Election of President, Vice President, Hony. Secretary, Joint Secretary, Treasurer, Joint Treasurer and 11 members of the Managing Committee, immediately after the General Body Meeting tentatively at 12.30 P.M
6. Any other(s) with the permission of the Chair.

21. Shri S.K. Kapoor filed another additional affidavit dated 26th May, 2006 deposing that membership was not frozen and members were admitted between 2001 and 2004, however, petitioner filed an application being CM No.5734 of 2006 seeking to restrain respondent No.6 from holding general body meeting and elections of the managing committee. Since the election process has already been set in motion, by order dated 5th May, 2006, the court declined to interfere and adjourned the application. Shri S.K.Kapoor, deponent, contended that elections to five posts, President, Vice President, Secretary, Treasurer and Joint Treasurer were unopposed

and, therefore, the candidates were declared elected unopposed even before 14th May, 2006 and the general body meeting and elections to the remaining post of General Secretary and 11 executive members had to be postponed due to a stay order granted by the Court of Civil Judge, Tis Hazari Courts, Delhi. The deponent on behalf of respondent No.6 also asserted that one member, Shri Abhay K. Chauhan, was caught on close-circuit camera picking a currency note who filed a civil suit being No.968 of 2006 and obtained an ex parte order. Shri S.K. Kapoor stated that for admission and enrolment of members, approval from the general body is not required and the enrolment and admission of members are within the power of the Managing Committee. Regarding approval of members enrolled in 2000 and 2004, it was stated that it was not on the agenda of General Body scheduled for 14th May, 2006. The Honorary Secretary also emphasized that once the election process has been put in motion, the same could not be interfered and regarding the interim order passed by learned Civil Judge, it was submitted that same was obtained by Shri Abhay K. Chauhan by mis-representation and by manipulation.

22. In a suit for injunction filed by one of the members against respondent No.6 in which an interim order dated 12th May, 2006 was passed. The operative portion of the interim order is as under:-

> "In the facts and circumstances, I am of the opinion that plaintiff is entitled for interim protection. Accordingly, the application under Order 39 Rules 1 and 2 is allowed and the defendant is directed not to allow members as shown in Annexure A of the plaint to participate in the General Body Meeting scheduled to be held on 14th May, 2006 for the purpose of approval of induction of said members and in eventuality of their names not being approved in General Body Meeting, the defendant is further directed not to allow the said members to participate in the election of executive committee to be held on the same date. However, nothing said hereinabove shall tantamount to have any expression on the merits of the case.
>
> Announced in the open court."

23. Annual General Body Meeting of 14th May, 2006 was not held for which the notice dated 11th April, 2006 was given on one of the ground that most of the members of the managing committee had been declared elected unopposed.

24. An application being CMP 8924 of 2006 was filed by a monitoring committee of respondent No.6 for intervention and necessary direction contending that when the General Body Meeting was convened on 14th May, 2006, none of the members of ad-hoc committee where Shri S.K. Kapoor is alleged to the Honorary Secretary had come nor was the returning officer appointed for the election was present. In the circumstances, 59 members of Shri Sai Bhakat Samaj who had assembled for General Body Meeting decided to hold the meeting in their absence and appointed Mrs.Shalini Uppal to chair the meeting. As the ad-hoc committee whose Honorary Secretary is Mr.S.K. Kapoor failed to conduct the election and participate in General Body Meeting, a monitoring committee of nine members was appointed to ensure the holding of elections. The minutes of the General Body Meeting held on 14th May, 2006 were filed. The minutes incorporated that Shri S.K. Kapoor misinterpreted the order deliberately in order to confuse the members and represented that in order to avoid multiplicity of the proceedings, the General Body Meeting which was to be held at 10.30 am is postponed sine die and therefore the agenda for GBM of 14th May, 2006 also stood postponed whereas the learned Civil Judge had only directed the names of the members who have not been approved in the General Body Meeting be not allowed to participate in the election of the Executive Committee.

25. The minutes recorded by the Managing Committee also incorporated that Shri M.K. Gupta and Manager of the Samaj, shri O.P. Sharma suddenly appeared at the

venue at 11.15 am and started representing that the General Body Meeting has been stayed by the court. Shri S.K. Kapoor also came afterwards but the members present appointed a Monitoring Committee to look into day-to-day affairs of the Samaj including financial affairs and operations of the Samaj. On 14th May, 2006, it was also resolved that new members shown in the directory of 2006 are per se illegal and against the written constitution of respondent No.6 and, therefore, they should not be allowed to participate in the election or General Body Meeting. The Monitoring Committee also decided that the donation boxes shall be opened and cash etc. shall be counted in presence of at least two or three members of the Monitoring Committee and the ad-hoc committee shall inform the members of Monitoring Committee by giving at least two days' intimation.

26. The Monitoring Committee also called for a meeting for 6th August, 2006. Respondent No.6 through Shri S.K. Kapoor opposed the said application of the Monitoring Committee contending that a General Body Meeting can be convened by the Honorary Secretary as per the decisions of the Managing Committee, by the President or on a requisition signed in writing by not less than 30% or 1/10th members with at least 21 days notice.

27. It was asserted that four weeks' notice is required for calling a General Body Meeting and Monitoring Committee has no authority to call for General Body Meeting or hold elections and in any case meeting for 6th August, 2006 called by notice dated 19th July, 2006 which is not a four weeks notice. Regarding 14th May, 2006 Meeting, it was stated that the returning officer put the candidates nominations on 8th May, 2006 and after withdrawal of nominations the final list of contestants were put up by the returning officer on the notice board on 10th May, 2006 and since

there was no opposition for the post of President, Vice President, Secretary, Treasurer and Joint Treasurer, they were elected unopposed and, therefore, the GBM convened for 14th May, 2006 was postponed and also because an ex parte order of Civil Judge dated 12th May, 2006 was received therefore, GBM was postponed to avoid multiplicity of litigations.

28. The writ petition was thereafter amended by the petitioner and in place of Registrar of Cooperative Societies, the Registrar of Society was impleaded. In reply to the amended petition another additional affidavit dated 4th September, 2006 of Shri S.K. Kapoor has been filed. Relying on G. Bassi Reddy Vs. International Corporation Research Institute, AIR 2003 SC 1764, it was pleaded that the writ petition under Article 226 of the Constitution lies only when the petitioner establishes that his or her fundamental right or some other right has been infringed and in the present facts and circumstances, the writ petition under Article 226 of the Constitution does not lie and is not maintainable.

29. An application by the petitioner CM No.11651 of 2006 seeking appointment of receiver/ administrator under Section 92 read with Order XL of Code of Civil Procedure seeking removal of present Ad-hoc Committee and to appoint Court Receiver and conduct enquiry into illegalities and for scrutinizing the list of alleged members has also been filed. By an additional affidavit filed by Shri S.K. Kapoor, the averments made in the applications were also refuted and it was contended that the reliefs claimed under prayer 1(a) and (b) in the application for appointment of receiver cannot be invoked as an equally efficacious remedy under the civil law of land under Section 92 of Code of Civil Procedure are available. It was also asserted that respondent No.6 society has already commenced the election process and the

notice of election has been published in Hindustan Times, New Delhi edition, dated 5th August, 2006 and the society has announced the meeting of General Body and election to be held on 8th October, 2006 at 10.30 AM. Shri S.K. Kapoor also stated that Managing Committee of respondent No.6 society has requested Hon'ble Mr. Justice K. Ramamoorthy, a retired Judge of this Court to be observer and oversee the meeting and election which has been agreed to by Hon'ble Mr.Justice K. Ramamoorthy (Retd.) in his response.

30. I have heard the learned Counsel for the parties at length and have perused the writ petition, counter affidavits, additional affidavits and the application by the Monitoring committee and the application for appointment of Administrator/observer. The main contention of the respondent no.6 is that the writ petition is not maintainable as the petitioner has no locus standi to file the petition with regard to affairs of respondent No.6 as the petitioner is not a member of respondent No.6 society and a member of the society only can raise issues about the management of the society. The respondent No.6 also contended that under Section 141 of Code of Civil Procedure, the Code is not applicable to writ petitions under Article 226 of the Constitution of India and consequently the provision pertaining to public charities under Section 92 of Code of Civil Procedure will not be applicable.

31. In Navodaya Vidyalaya Samiti Vs. Bhupinder Kaur And Others, JT 1988 (2) SC 236, the order of the High Court allowing the writ petition purporting to act under order VIII Rule 10 of Code of Civil Procedure was set aside holding that the High Court ought to have appreciated Section 141 of the Code read with explanation thereto. A Division Bench of this Court in 2005 (54) DRJ (DB) 647, Narayan Singh (Deceased) Vs. D.K. Das and Another, had held that on the death of the original

petitioner, the petition cannot be said to be abated on the basis of provision of Order 22 of Code of Civil Procedure as under Section 141 read with explanation, the provisions of Civil Procedure Code are not applicable. Respondent No.6 also relied on (2005) 4 SCC 117, K. Venkatachala Bhat and Another Vs. Krishana Nayar, where it was held that the Code is not applicable to proceedings under Article 226 of the Constitution of India. In Commissioner of Endowments and Others Vs. Vittal Rao and Others, (2005) 4 SCC 120, though the compromise was not in writing and not signed by the parties in accordance with Order 23 Rule 3 of the Code of Civil Procedure, however, as the provisions of Code of Civil Procedure are not applicable to the writ petition under Article 226 of the Constitution of India, such a compromise which was not in writing and not signed by the parties was held to be sustainable. In view of non-applicability of Section 92 of the Code of Civil Procedure, respondent No.6 has contended that even if there is any breach of any express or constructive trust created for public purpose of a charitable or religious nature, the writ petition shall not be maintainable and the relief as prayed by the petitioner cannot be granted.

32. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The Supreme Court in Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr., AIR 2004 SC 778 had observed:-

> " Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> "Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr.. To decide therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive."

Suffice it will be to say that the precedents relied on by the petitioner are not applicable to the facts and circumstances of the present case.

33. The case of respondent No.6 is apparently distinguishable. Respondent No.6 has admitted that it is a charitable institution. Respondent No.6 manages the donation and other earnings of Sai Temple which is also known as *Chhota Shirdi*. It has not been disputed by respondent no.6 that that the elections to the Managing Committee had last taken place in 1998. Since then there has not been any election of the Managing Committee despite serious allegation of mismanagement and misappropriation of public funds received as donations from the general public. Though respondent No.6 through Honorary Secretary of the Managing Committee,

which is keeping control of the Sai Temple, has not denied that the election has not taken place since 1998, however, no reasons have been given for not holding the elections for such a long time and why the management is continued by the managing committee elected in 1998 despite serious allegations of misappropriation and mismanagement.

34. Respondent No.6 though issued a notice for election on 14th May, 2006, however, the elections were not held. Though there are so many disputes and the allegation have been made that the members of the petitioner are trying to take over the said temple, yet it is alleged that for some of the posts of President, Secretary, etc. there were no nominations and some of the members have been elected unopposed to some of the posts. A monitoring committee has filed an application for impleadment and contending that Mr. S.K.Kapoor and the members of the present managing committee did not come for General Body meeting on 14th May, 2006 and did not hold the election for the managing committee. The shelter has been taken by the secretary of the respondent no.6 under the interim order of a learned Civil Judge who had only restrained those members whose names were not approved by the General Body not to be allowed to participate in the election of the Executive Committee. Perusal of the interim order passed by the Civil Judge reflects that no order was passed for stay of either the General body or the election of the Executive Committee. Respondent No.6 has now again fixed 6th October, 2006 as the date for election of the Executive Committee and for holding the General Body. From the agenda which was circulated for the meeting of 14th May, 2006, it is apparent that the last General Body was held on 19th July, 1998 and neither the minutes had been approved of 1998 nor any General Body meeting has taken place since then. Though a great emphasis has

been led by respondent No.6 on various work done by the Managing Committee which was elected in 1998 and which is continuing since 1998, however, there is no plausible reason rather no reasons have been given as to why elections were not held since 1998.

35. The elections which are scheduled for 6th October, 2006, respondent No.6 has already appointed an observer, Hon'ble Mr. Justice K. Ramamoorthy (Retd.) who has also accepted to be an observer. However, he has no power in case any person takes part in the election who is not a member of respondent No.6 or who is not authorized to take part in the election for some other reason. The observer appointed by respondent No.6 also does not have any other powers for the elections of the Managing Committee scheduled for 6th October, 2006.

36. In the circumstances, what is to be considered is whether such an observer who has been appointed by respondent No.6, is to be clothed with powers so that a fair election may be conducted and temple may be managed till the duly elected management committee takes over. If the observer appointed by the respondent no.6 who does not have any power, is given power to conduct the elections and till appointment of duly elected management committee to conduct the affairs of the temple, such an exercise will not be strictly under the provision of section 92 of the Code of Civil Procedure and in peculiar facts and circumstances of the case, the respondent no.6 can not plead that such an action will be barred under section 141 of the Code of Civil Procedure.

37. During the arguments, it was put to the learned Senior counsel for respondent No.6, Mr. A.K. Singla, that if the observer appointed by respondent No.6, Hon'ble Mr.

Justice K. Ramamoorthy (Retd.), is given powers so that he can conduct free and fair election of respondent no.6 and till the free and fair election of the Managing Committee is conducted, temple be also run by him, then how the rights of his client, respondent No.6, which is represented by its Honorary Secretary, Shri S.K. Kapoor will suffer. Learned counsel for respondent No.6 was unable to give any plausible reason not to appoint an observer/administrator with powers to hold a fair election. Without proper powers to eliminate malpractice during elections, how a fair elections can be conducted has not been explained by Learned Counsel for the respondent no.6. There is already dispute as to who are entitled to vote. The petitioner is contending that some of the members inducted in 2000 and 2004 were not approved and therefore, they can not vote in the elections whereas Mr. Kapoor on behalf of respondent no.6 has contended that the managing committee has the power to induct the new members and therefore the members who has been inducted in 2000 and 2004 are also entitled to vote. Voting by such members has been injuncted by a Learned Civil Judge. In this scenario, how an election can be conducted fairly and properly without appropriate powers to the observer has remained unanswered by the respondent no.6.

38. A learned Civil Judge has already passed an order that those members whose induction has not been approved will not participate in the election of the Executive Committee, which interim order has not yet been vacated. In any case, if a member though inducted, who has not been approved, is not entitled to participate in the election. Consequently, to have a free and fair election, an observer must be in a position to enforce that only those persons who are authorized to participate in the election, be allowed to vote. If respondent No.6 has called for election of the

Managing Committee, they cannot contend that any person who is not authorized to participate in the election, should also be allowed to participate. If that be so, respondent No.6 cannot object to the appointment of their own observer, Hon'ble Mr. Justice K. Ramamoorthy (Retd.), to have the powers to enforce participation by authorized members only and to have a fair election. Consequently, respondent No.6 is not entitled to contend that there own observer should not be given powers to conduct a free and fair election on account of non-applicability of the provisions of Code of Civil Procedure to the proceedings under Article 226 of the Constitution of India in view of Section 141 of Code of Civil Procedure read with its explanation as alleged on behalf of the respondent no.6.

39. The reliance of the respondent no.6 on AIR 1977 SC 1703, K.K.Srivastava etc. Vs Bhupendra Kumar Jain; AIR 2001 SC 3982, Shri Satguru Janardan Swami Vs State of Maharastra; AIR 203 SC 1764, G.Bassi Reddy etc. Vs International Crops Research Instt & ors is also without any help to the respondent no.6. These cases are clearly distinguishable from the facts and circumstances of the present case. K.K.Srivastava (supra) and Shri Sant Sadguru Janardan Swami (supra) were pertaining to the election disputes of Bar Council and of Cooperative society respectively which are quite distinct with the present disputes of the petitioner and respondent no.6. No election petition can be filed in the present facts and circumstances. In any case the dispute which has remained is whether an observer appointed by the respondent no.6 should be given power to conduct the election fairly or not or such an observer be allowed to remain powerless and helpless, in case of any malpractice during the elections. G.Bassi Reddy (supra) another judgment relied on by the respondent no.6 was also pertaining to an International Crop Research

Institute which was not a charitable society and was not doing anything for charity and public purpose.

40. In Binny Ltd & anr. Vs D.S.Veer Ranji, (2005) 6 SCC 657, the Supreme Court had held that there cannot be any general definition of `public authority' or `public function' and the facts of the each case decide the point. It was held that the discharge of public function by a private party makes him amenable to writ jurisdiction. It was held that a body is performing a public function when it seeks to achieve some collective benefit for the public or section thereof and is accepted by the public or section thereof as having authority to do so. Bodies, therefore, exercise public functions when they intervene and participate in social or economic affairs in the public interest. The Supreme Court had held:

> "11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. **However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function.** The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on *Judicial Review of Administrative Action* (5th Edn.) by de Smith, Woolf & Jowell in Chapter 3, para 0.24, it is stated thus:
>
> > "A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is

> accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides 'public goods' or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.
>
> Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is Government."

41. Applying these criteria it is inevitable to infer that the writ petition is maintainable against respondent no. 6 as it is exercising public functions. In (1989) 2 SCC 691, Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, it was held by the Apex Court that under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose". To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. The observation of the Apex Court is as under:

> **22.** Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract."[7] We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

42. Reliance of the respondent no.6 on 2006 III AD (DELHI) 290, S.D.Siddiqui Vs University of Delhi is not appropriate because the Delhi University Teachers Association is not an organization with Charitable purposes. DUTA does not perform public functions nor it seeks to achieve some collective benefits for the public or section thereof. On the basis of the ratio of this judgment, the respondent no.6 cannot contend that the writ petition of the petitioner is not maintainable.

43. In the present case there are no disputed questions of facts, in the facts and circumstances of the case. The election to the managing committee has to take place which managing committee shall maintain and run the Sai temple. What is only to be seen and determine whether the powers should be given to an observer appointed by the respondent no.6 and in case powers are to be given to him then what powers be given to the Observer so that he may be able to conduct a free and fair election and till a duly elected managing committee takes over the control of the Sai Temple, to run the affairs of the temple in accordance with rules and regulations. Therefore, the only question is whether the Observer appointed by the respondent no.6 be given powers or not and be appointed as a Court Observer. It is well settled that access to justice by

way of public Law remedy would not be denied when a lis involves public law character and when the other forums would not be in position to grant appropriate relief. The respondent no.6 is unable to show how an observer appointed by him without any powers shall be able to exercise rights in such a manner so as to have a duly elected managing committee for running the affairs of Sai temple.

44. A Bench of Apex Court in *ABL International Ltd.* v. *Export Credit Guarantee Corpn. of India Ltd. (*(2004) 3 SCC 553 : JT (2003) 10 SC 300 [12]) observed that in certain cases even a disputed question of fact can be gone into by the court entertaining a petition under Article 226 of the Constitution, holding: (SCC p.572, para 28)

> "*28.* However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks*[13].) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate

45. In Federal Bank Ltd. v. Sagar Thomas,(2003) 10 SCC 733, at page 747 the Supreme Court had held that a private body discharging public duty or positive obligation of public nature will be amenable to a writ filed under Article 226 of the Constitution of India. The Apex Court had held as under :

> **"18.** From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (*i*) the State (Government); (*ii*) an authority; (*iii*) a statutory body; (*iv*) an instrumentality or agency of the State; (*v*) a company which is financed and owned by the State; (*vi*) a private body run

substantially on State funding; (*vii*) **a private body discharging public duty or positive obligation of public nature;** and (*viii*) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

46. For these reasons this cannot be doubted that the present writ petition shall be maintainable in the present facts and circumstances of the case. Sai Temple is managed by respondent no. 6. The management includes receipt of donations and other incomes of the Sai Temple and its proper utilization. The management committee in the circumstances should be duly elected in accordance with rules and regulations by the members who are duly approved in accordance with rules and regulations.

47. In the circumstances it will be appropriate to confer power on the Observer of respondent no.6 Hon'ble Mr. Justice K.Ramamoorthy (Retd.) so that he may be able to get the elections conducted properly according to the rules and regulations. Therefore the said Observer is authorized to adjudicate upon the eligibility of the voters for the election of the managing committee. However, the eligibility will be decided in consonance with and giving due consideration to any of the order passed by any Civil Judge. The Observer shall be entitled to take such steps and adopt such procedures as may be permissible in consonance with the rules and regulations for the proper election of the managing committee of respondent no.6. The Observer shall be further entitled to take the help of the police and other Government authorities as may be deemed fit and proper for free and fair election to the managing committee and till then the management of the Sai Temple shall be monitored by him in accordance with the rules and regulations.

48. A theoretical possibility that the elections may not be conducted on 6th

October, 2006 for any un-foreseen reason or circumstances, can not be ruled out completely. The observer, in that case is also authorized to cancel the election to be held on 6th October,2006 in case the observer is of the opinion that the election to the managing committee can not be held fairly and properly on the said date because of paucity of time or for any other plausible reason. In that case the observer shall fix some other date for holding the elections and then conduct the election of the managing committee in accordance with the rules and regulations as expeditiously as possible and within three months and till then shall manage all the affairs of the Sai temple in accordance with the rules and regulations. The observer appointed by the respondent no.6 shall also be entitled for such emoluments as may be determined by him considering the charitable nature of the temple. Police and other authorities are also directed to render all the assistance to observer Hon'ble Mr. Justice K. Ramamoorthy (Retd.) to carry out his work.

49. Therefore, for these reasons the rule is made absolute and the writ petition is disposed of in terms of directions given herein above. Parties are however, left to bear their own costs. A copy of this order be sent to Hon'ble Mr. Justice K. Ramamoorthy (Retd.) forthwith. Copies of this order be also given dasti to the parties under the signatures of the Court Master.

ANIL KUMAR, J.

October 5 , 2006
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2 C.M. for Direction.